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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,928	06/29/2006	Minne Van Der Veen	NLO40082	2420
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EXAMINER				
WRIGHT, BRYAN F				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/596,928

Applicant(s)

VAN DER VEEN ET AL.

Examiner

BRYAN WRIGHT

Art Unit

2131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to original action file on June 29, 2006. Claims (1-11) are pending.

Priority

2. Applicant's claim for benefit of foreign priority under 35 U.S.C. 119 (a) - (d) is acknowledged.

The application is filed on June 29, 2006 but is a 371 case of PCT/IB05/50137 application filed 01/12/2005 and has a foreign priority as follows: EUROPEAN PATENT OFFICE (EPO) 04100118.1 filed on 01/15/2004.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 9 and 10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant claim limitations as recited in claims 9 and 10 are directed to data manipulation for which renders no tangible or concrete result. Applicant is advised to amend claims 9 and 10 such that the claims include the following statement to overcome 101 rejection, "a process executing on a processor within a device ".

4. Claim 11 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant claim limitations as recited in dependent claim 11 is directed to computer software for which is non-statutory subject matter. Applicant is advised to amend dependent claim 11 such that the claim include the following statement to overcome 101 rejection, " computer software executing on a processor within a device "

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Levy (US Patent Publication No. 2002/0052885).

6. As to claim 1, Levy teaches a **method of dynamically allocating payload bits in a watermarking system, the method including steps of:**

(a) **determining one or more parameters to be conveyed in bits of a payload to be included in watermark information for embedding in programme content** (i.e., ... teaches embedded data is a payload of one bit determining whether or not the file can be copied [par. 45]);.

(b) **dynamically allocating the bits to corresponding of the one or more parameters so as to represent the one or more parameters in the payload** (i.e., ... teaches payload is to be continuously embedded with dynamic locking and it contains only a few bits, such as 1 bit, a system designer can easily convert the payload into a multi-bit payload [par. 47]);

(c) **including the payload in the watermark information** (i.e., ... teaches embed a code indicating the number of frames between succeeding watermark payloads [par. 147]; and

(d) **embedding the watermark information including the payload into the programme content** (i.e., ... teaches of embedded data throughout the content [par. 45]).

7. As to claim 2, Levy teaches a **method where the one or more parameters include at least one of: a content identifier (IDc), a user identifier (IDs), security information, redundancy checking (CRC)** (i.e., ... teaches for the embedded data when it contains a unique ID, such as unique to the retailer, song, artist and/or rights holder [par. 34]).

8. As to claim 3, Levy teaches a **method where a dynamic allocation implemented in step (b) is made in response to at least one of:**

(a) **the nature of the programme content** (i.e., ... teaches embedded data when it contains a unique ID, such as unique to the retailer, song, artist and/or rights

holder, is to link the consumer to more information, such as information about the retailer, song, artist and/or rights holder [par.34]] ;

and (b) **a potential number of users likely to request the programme content** (i.e., ... teaches transfer of a content object (e.g., by streaming or file transfer), a fingerprint or meta-tag obtained from the object can be parsed from the in-transfer object and used as an ID to access a database record. ... teaches pre-existing information that can be read by the client device (e.g., to ascertain permitted usage rights) [par. 111]).

9. As to claim 4, Levy teaches a **method where a dynamic allocation implemented in step (b) is customized for each user requesting the programme content** (i.e., ... teaches a system designer can easily convert the payload into a multi-bit payload [par. 47]).

10. As to claim 5, Levy teaches a **method where at least a portion of the parameters conveyed as dynamically allocated bits in the payload is in encrypted form** (i.e., ... teaches the embedded data can be modified by the content and then encrypted for more secure [par. 38]).

11. As to claim 6, Levy teaches a **method adapted for use in electronic music delivery (EMD) systems** (i.e., ... teaches MP3 content owners, such as Emusic.com,

and MP3.com can embed their songs with copyright bits that control file sharing without audibility [par. 65; par. 115]).

12. As to claim 7, Levy teaches a method where the dynamic allocation of bits of the payload is determined by at least one of:

(a) **an audio fingerprint derived from the programme content** (i.e., ...teaches fingerprint function that turns some or all of the content into a few bits of data [par. 36]);

(b) **popularity of the programme content** [par. 115];

(c) **a required level of security for the watermark information** (i.e., ... teaches Copyright/Subscription Level Bits or Protocol (e.g., 1-3 Bits) [par. 50]);

and (d) **a required level of reliability of watermark information detection** [fig. 3].

13. As to claim 8, Levy teaches a watermarking system arranged to watermark programme content by utilizing the method according to Claim 1 [fig. 2].

14. As to claim 9, Levy teaches a watermark information for embedding in programme content, said information being generated by a method according to Claim 1 (i.e., ... teaches embedding data throughout the content [par. 14]) .

15. As to claim 10, Levy teaches a **watermarked programme content having embedded therein watermark information generated using a method according to Claim 1** [par. 26].

16. As to claim 11, Levy teaches a **computer software arranged to be executable on one or more computing devices for implementing the method according to Claim 1** (i.e., ... teaches that each user is provided with client software or firmware, which is provided electronically or on a portable storage device ... [par. 76]).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRYAN WRIGHT whose telephone number is (571)270-3826. The examiner can normally be reached on 8:30 am - 5:30 pm Monday -Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AYAZ Sheikh can be reached on (571)272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRYAN WRIGHT/
Examiner, Art Unit 2131

/Christopher A. Revak/
Primary Examiner, Art Unit 2131